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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/254,578 04/14/99 BLAZEK

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023552 QM12/0504  
MERCHANT & GOULD  
P O BOX 2903  
MINNEAPOLIS MN 55402-0903

EXAMINER
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ART UNIT	PAPER NUMBER
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3732  
DATE MAILED:

05/04/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/254,578

Applicant(s)

Blazek

Examiner

Robyn Kieu Doan

Art Unit

3732



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 14, 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 16 20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 6, 8-10, 13-18, 21 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Swiss Patent CH237277.

With regard to claims 1, 3, 6, 8-10 and 13-18, Swiss Patent discloses a nail file comprising nail file body having a single integral of glass. In regard to claims 21, 24-25, Swiss patent is capable to perform all the steps substantially claimed.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swiss Patent in view of Daley.

With regard to claims 2, 4, 5 and 7, Swiss Patent discloses a nail file comprising all the claimed limitation in claim 1 as discussed above except for the shape of the nail's body being an oblong shape and the edges of the body being beveled. Daley discloses a nail file (fig. 4) comprising a body (36) being an oblong shape and the edges of the body being beveled. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the body of the nail file being an oblong shape as taught by Daley into the nail file of Swiss Patent for the purpose of intended use.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swiss Patent in view of Pangburn.

With regard to claim 11, Swiss Patent discloses a nail file comprising all the claimed limitation in claim 1 as discussed above except for the abrading surface having a roughness varying from 10-100 microns. Pangburn discloses a nail file (fig. 1) comprising a body (10) which has a glass surface (11a) and an abrading material (11) being disposed on at least part of the surface with a roughness varying from 10-100 microns (col. 2, line 40). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the

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roughness of the abrading surface varying from 10-100 microns as taught by Pangburn into the nail file of Swiss Patent for the purpose of intended use.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swiss Patent in view of Tsukamoto.

With regard to claim 11, Swiss Patent discloses a nail file comprising all the claimed limitation in claim 1 as discussed above except for one end of the body being V-shaped. Tsukamoto discloses a nail file (fig. 1) comprising a body with one end being V-shaped. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the V-shaped end as taught by Tsukamoto into the nail file of Swiss Patent for the purpose of intended use.

7. Claims 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swiss Patent in view of Bray.

With regard to claims 19 and 23, Swiss Patent discloses a nail file comprising all the claimed limitation in claim 21 as discussed above except for one abrading surface being a sanded surface. Bray discloses a nail file having a body and at least one abrading surface being a sanded surface (col. 4, lines 9-10). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the sanded surface as taught by Bray into the nail file of Swiss Patent for the purpose of intended use.

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8. Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swiss Patent in view of Bankier et al.

With regard to claims 19 and 23, Swiss Patent discloses a nail file comprising all the claimed limitation in claim 21 as discussed above except for one abrading surface being an acid etched. Bankier et al disclose a method of making nail file comprising an abrading surface being an acid-etched (col. 4, lines 43-48). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the acid-etched surface as taught by Bankier et al into the nail file of Swiss Patent for the purpose of intended use.

### ***Response to Arguments***

Applicant has argued that the roughness of the file's body has an essentially random texture and Applicant has considered this limitation is critical, however, no patentable weight is given to this limitation since there is no support to such limitation in the disclosure; and also with regard to the method of making the roughened surface of the nail body, it has been held that one ordinary skill in the art could make the nail file surface to be rough by using, for example, grinding wheel (showed in Swiss Patent) or other techniques since Applicant also cited this example of using a wide variety of techniques in the specification page 3, lines 9-10.

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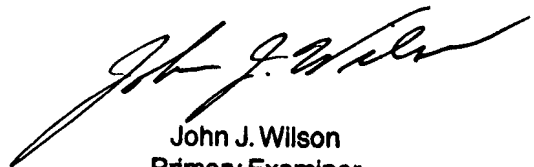
9. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Kieu Doan whose telephone number is (703) 306-9182.



Robyn Kieu Doan

Examiner

May 2, 2001



John J. Wilson  
Primary Examiner